DEPARTMENT OF STATE REVENUE

04-20181862R.MOD; 04-20181863R.MOD
04-20181864R.MOD; 04-20181773R.MOD

Memorandum of Decision: 04-20181862R; 04-20181863R; 04-20181864R; 04-20181773R
Sales and Use Tax
For Tax Years 2016 & 2017

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section is provided for the convenience of the reader and is not part of the analysis contained in this document.

HOLDING

Out-of-state vehicle dealership established that it had standing to file claims for refund.

ISSUE

I. Sales and Use Tax–Refund.

Authority: IC § 6-8.1-9-1; IC § 6-2.5-3-5; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the denial of its claims for refund.

STATEMENT OF FACTS

Taxpayer is a vehicle dealership located in Illinois. Taxpayer filed four separate Claims for Refund (GA-110L) with the Indiana Department of Revenue ("Department"). Taxpayer believes that sales tax was erroneously overpaid to the Department, and thus filed refund claims. The Department denied Taxpayer's refund claims. Taxpayer in turn filed protests with the Department. An administrative hearing was held; this written ruling results. Further facts will be presented as required.

I. Sales and Use Tax–Refund.

DISCUSSION

The Department initially notes that, "'[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . .[courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as all the Department's previous decisions, shall be entitled to deference.

Taxpayer, in a June 21, 2018 protest letter, describes the facts as follows:

> [Taxpayer] is protesting . . . for the refund of tax overage to be issued to the dealership. [Customers T and S] paid $2378.20 in taxes to [Taxpayer] on 10/31/2016. The bill of sale showing this transaction is attached. This is 7[percent] of the taxable amount. 6.25[percent], $2123.00, of this amount was paid then paid to Illinois. The Illinois tax form, journal entry showing the posting, and the withdrawal from [Taxpayer's] checking account are all attached. A total of .75[percent], $255.20, was supposed to be paid to the state of Indiana. However a clerical error was made on the ST-108E form was made and the "credit for sales tax previously paid to another state" was not entered and therefore credit was not given. This error resulted in an over payment of $2123.00 to the state of Indiana. The ST-108E, application for certificate of title for a vehicle, Bureau of Motor Vehicles Customer Transaction Receipt, and the withdrawal from [Taxpayer's] checking account are attached.

In a similar vein, Taxpayer's other three protest letters also cite to Taxpayer making a clerical error on the ST-108E. The Department also notes that since the four protests are for the same Taxpayer involving the same legal issue, for clarity the protests will be addressed collectively in one written ruling.

At the hearing Taxpayer stated that at the time of the four sales that it collected 7 percent sales tax from the customers at issue. Since the sales occurred in Illinois but for Indiana residents, Taxpayer intended to remit 6.25

percent tax to Illinois and .75 percent to Indiana. An Indiana resident customer can get a credit for the Illinois sales tax paid (i.e., 6.25 percent) and the customer would owe the remaining percent .75 percent to Indiana. *See* IC § 6-2.5-3-5. Taxpayer's contention is that *Taxpayer* (i.e., the dealership) mistakenly remitted the 6.25 percent to Indiana when in fact it should have been .75 percent remitted to Indiana.

The Department's denial letter, dated June 19, 2018, letter states:

> Per [45] IAC 2.2-9-5, a retail merchant cannot "Offer to assume or absorb part of the customer's state gross retail or use tax . . . ."
>
> Per I.C. 6-2.5-6-13, a taxpayer "is entitled to a refund from the department if a retail merchant erroneously collects gross retail taxes." In this situation, the taxpayer is not the one applying for the refund.

In the present case, 45 IAC 2.2-9-5 does not seem to be applicable to the facts. Taxpayer was not offering to absorb or include in the price the sales tax. The invoices show a line for "State and Local Taxes," and Taxpayer states that it in fact collected sales tax. Also, the standing issue does not seem to be applicable either. Taxpayer contends that it collected 7 percent sales tax from each of the customers but then Taxpayer remitted 6.25 percent to Illinois and 6.25 percent to Indiana. Taxpayer argues that regarding the latter, Indiana was only entitled to .75 percent, and thus this constituted an overpayment by Taxpayer itself and not the customers.

According to Taxpayer, the purchaser of the vehicle paid the appropriate tax 7 percent (allocated as 6.25 percent to Illinois and .75 percent to Indiana, with the Indiana customer getting credit pursuant to IC 6-2.5-3-5 for the Illinois sales tax paid). Per Taxpayer's argument, it was the Taxpayer (dealership) that overpaid, and not the four individual customers, when Taxpayer remitted 6.25 percent to Indiana.

IC § 6-8.1-9-1 states in relevant part:

> (a) *If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department*. Except as provided in subsections (j) and (k), in order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:
> (1) The due date of the return.
> (2) The date of payment.
> For purposes of this section, the due date for a return filed for the state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance tax is the end of the calendar year which contains the taxable period for which the return is filed. The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund.
> (*Emphasis added*).

In summary, Taxpayer argues that it mistakenly sent both Illinois and Indiana 6.25 percent amount in four cases, due to a clerical error on its part. Indiana was only entitled to .75 percent. Thus Taxpayer asks for a refund of the overpayment that Taxpayer itself sent to Indiana. The crux of the matter is whether or not Taxpayer's documentation establishes that Taxpayer mistakenly remitted more tax than was due to Indiana out of Taxpayer's account.

The Refund Section is directed to review the documents that Taxpayer provided in order to verify Taxpayer's contentions. If Taxpayer's documentation does indeed show that Taxpayer remitted the same amount to Illinois and Indiana, and that it was from Taxpayer's bank account, then Taxpayer has standing as the "person entitled to the refund" under IC § 6-8.1-9-1. In other words, if Taxpayer's documentation establishes that Taxpayer in fact paid Illinois (6.25 percent) and overpaid Indiana, then Taxpayer would be entitled to a refund of the amount paid to Indiana–less the .75 percent that would be due to Indiana.

FINDING

Taxpayer's protest is sustained subject to Refund Section review of its documentation.

October 31, 2018

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An html version of this document.